

602: Access to Residents' Records

- A. Under both federal and state law, designated LTCO have access to review the medical, social, personal, clinical, financial, and other records of a resident.
- B. In order to empower residents, a LTCO should examine a resident's records with the resident, whenever possible, and should explain to the resident how to read and use the records. Depending on the functional and legal status of the resident, the LTCO shall seek to access the records in accordance with the following:
 - 1. When a resident is capable of giving informed consent, a LTCO may, with the express permission of the resident, examine a resident's clinical, social, medical, financial, and other records. The LTCO shall, whenever possible, seek to have this consent in writing. When a written consent is not possible, oral authorization by the resident must be documented in LTCOP case records. The LTCO must make a good faith judgment as to the capacity of a resident to give informed consent to access the resident's records.
 - 2. When a resident has executed a durable power of attorney for health care decisions, the LTCO may examine a resident's clinical, social, financial, medical and other records with the informed consent of the resident. When a written consent is not possible, oral authorization by the resident must be documented in LTCOP case records. The LTCO must make a good faith judgment as to the capacity of a resident to give informed consent to access the resident's records.
 - 3. If a resident with a durable power of attorney for health care decisions is not able to give informed consent, the LTCO may seek informed consent from

the agent or attorney-in-fact, appointed by the resident under the durable power of attorney for health care. The LTCO shall, whenever possible, seek to have this consent in writing. When a written consent is not possible from the resident's agent or attorney-in-fact, oral authorization by the agent or attorney-in-fact under the durable power of attorney for health care must be documented in LTCOP case records.

4. When a guardian of the person has been appointed by a court for the resident, the LTCO may examine a resident's clinical, social, medical, financial and other records with the informed consent of the resident. The LTCO shall, whenever possible, seek to have this consent in writing. When a written consent is not possible, oral authorization by the resident must be documented in LTCOP case records. The LTCO must make a good faith judgment as to the capacity of a resident to give informed consent to access the resident's records.
5. If a resident with a guardian is not able to give informed consent, the LTCO may seek informed consent from the court appointed guardian. The LTCO shall, whenever possible, seek to have this consent in writing. When a written consent is not possible, oral authorization by the guardian must be documented in LTCOP case records.
6. If the LTCOP is investigating an allegation of financial exploitation of an incapacitated nursing home resident, an agent or attorney-in-fact appointed by the resident under a durable power of attorney for financial decisions shall, upon request, provide a record on all receipts, disbursements and significant actions taken by the agent or attorney-in-fact to the

Regional Ombudsman according to 755 ILCS 45/2-7.5.

7. When a resident is incapable of giving informed consent for access to records, Regional Ombudsman or Community Ombudsman may access that resident's records when:
 - a. the Regional Ombudsman, or Community Ombudsman has conducted a face-to-face visit with such resident and concluded the resident is incapable of giving informed consent and determined:
 - i. that the resident has no legally authorized representative empowered to make decisions for the resident; or
 - ii. that the resident's legally authorized representative is implicated in the complaint; or
 - iii. that the resident's legally authorized representative is not acting in the best interests of the resident; or
 - iv. that the resident's legally authorized representative cannot be located within 24 hours despite a reasonable effort by the LTCO to do so; and
 - v. a review of the incapable resident's records is necessary to resolve a complaint or to protect the resident's rights.
 - b. the SLTCO, Regional Ombudsman, or Community Ombudsman, with approval from the SLTCO, or Regional Ombudsman, may sign a

written request for the resident's record to a long term care facility based on the recommendation of the LTCO who has completed all the steps outlined in Section 602(B)(7) of this Manual.

- C. When a LTCO is denied access to a resident's records by the custodian of such records, after presenting appropriate consent from a resident, the resident's guardian or legal representative, or SLTCO, Regional Ombudsman or Community Ombudsman, the Regional Ombudsman and SLTCOP should follow the procedures prescribed in Section 601 (E) and (F) of this Manual.
- D. The information contained in all the records of a resident is to be treated with the highest possible degree of confidentiality, and shall never be used or disclosed except as necessary for the investigation or resolution of a complaint, and in those circumstances, only to those persons with an absolute need for the information. The privacy rights of the resident and the right of the resident to pursue or to decline to pursue a complaint shall guide the LTCO's actions in all circumstances.